IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3356 OF 2004

Hemchandra Yadunandan Panjikar ...Applicant

Versus

Union Territory of Dadra & Nagar Haveli ...Respondent

.....

Mr.Amit Desai with Mr.Prakash Naik i/b A.S.Dayal & Associates for Applicant.

Mr.R.M.Agrawal for Respondent No.1.

Mr.V.B.Konde-Deshmukh, A.P.P. for State.

ALONG WITH

CRIMINAL APPLICATION NO.3484 OF 2004

Union Territory of Dadra & Nagar Haveli, Silvassa & Anr. ...Applicants

Versus

Shri Kartik Mehta & Anr. ...Respondents

.....

Shri R.M.Agrawal for Applicants.

Mr.V.B.Konde-Deshmukh, A.P.P. for State.

Mr.Amit Desai with Mr.Prakash Naik i/b A.S.Dayal & Associates for Applicant.

ALONG WITH

CRIMINAL APPLICATION NO.3485 OF 2004

Union Territory of Dadra & Nagar Haveli, Silvassa & Anr. ...Applicants

Versus

Shri Ram Ashish Rai & Ors. ...Respondents

.....

Shri R.M.Agrawal for Applicants.

Mr.V.B.Konde-Deshmukh, A.P.P. for State.

Mr.A.M.Mundargi with Mr.Subodh Desai for Respondents.

ALONG WITH

CRIMINAL APPLICATION NO.3486 OF 2004

Union Territory of Dadra & Nagar Haveli, Silvassa & Anr. ...Applicants

Versus

Shri P.K.Jadia & Anr. ...Respondents

.....

Mr.R.M.Agrawal for Applicant.

Mr.V.B.Konde-Deshmukh, A.P.P. for State.

Mr.Amit Desai with Mr.Prakash Naik i/b M/s.A.S.Dayal & Associates for Respondent No.1.

ALONG WITH

CRIMINAL APPLICATION NO.3487 OF 2004

Union Territory of Dadra & Nagar Haveli, Silvassa & Anr. ...Applicants

Versus

Shri Avinash Sisodia & Anr. ...Respondents

.....

Mr.R.M.Agrawal for Applicant.

Mr.V.B.Konde-Deshmukh, A.P.P. for State.

Mr.Amit Desai with Mr.Prakash Naik i/b M/s.A.S.Dayal & Associates for Respondent No.1.

ALONG WITH

CRIMINAL APPLICATION NO.3488 OF 2004

Union Territory of Dadra & Nagar Haveli, Silvassa & Anr. ...Applicants

Versus

Shri Rajesh Babubhai Solanki & Ors. ...Respondents

.....

Mr.R.M.Agrawal for Applicants.

Mr.V.B.Konde-Deshmukh, A.P.P. for State.

Mr.M.S.Mohite for Respondents.

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CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 20, 2004.

P.C.

1. Heard Counsel appearing for the parties.

2. In all, six applications are placed before me for hearing in respect of the same offence. Criminal Application No.3356 of 2004 is for release of the applicant-Accused Hemchandra Yadunandan Panjikar on anticipatory bail. Criminal Application No.3484 of 2004 has been filed by the prosecution for cancelling the regular bail granted to Accused Kartik Mehta by the lower Court by

common order dated August 9, 2004. Criminal Application No.3485 of 2004 is again filed by the prosecution against Accused Ram Ashish Rai and three others for cancellation of regular bail granted by the lower Court by order dated 9th August 2004. The Respondents in this Application are stated to be Security Personnel (gunmen) who had fired during the incident in question. Criminal Application No.3486 of 2004 is again filed by the prosecution against Accused P.K.Jadia for cancellation of regular bail granted by common order dated 9th August 2004. Criminal Application No.3487 of 2004 is filed by the prosecution for cancellation of regular bail granted to Accused Avinash Sisodia by the lower Court by common order dated 9th August 2004 and lastly, Criminal Application No.3488 of 2004 is filed by the prosecution for cancellation of regular bail granted to Accused Rajesh Babubhai Solanki and Kuldeepsinh Mahendrasinh Parmar by the lower Court by common order dated 9th August 2004.

3. Mr.Agrawal has appeared for the prosecution. Mr.Amit Desai has appeared for

Accused Kartik Mehta, Avinash Sisodia, P.K.Jadia and H.Y.Panjikar. Mr.Mundargi has appeared for Accused Ram Ashish Rai and three others (gunmen), who were applicants in the Misc.Criminal Application No.18/2004 in the lower Court, and Mr.Mohite has appeared for Accused Rajesh Babubhai Solanki and Kuldeepsinh Mahendrasinh Parmar.

4. I shall first deal with the grievance made on behalf of the prosecution that the common order passed by the lower Court dated 9th August 2004 releasing Accused Kartik Mehta, Avinash Sisodia, P.K.Jadia, Rajesh Babubhai Solanki and Kuldeepsinh Parmar is perverse. According to Mr.Agrawal, only three reasons have weighed with the lower Court for granting bail to those accused. The first reason recorded in Para 23 is that on perusal of case diary, it is found that except a bald statement made by all the witnesses that firing was ordered by Panjikar, Jadia and Sisodia at the instance of Kartik Mehta, no other independent evidence is forthcoming to indicate that conspiracy was hatched amongst the accused persons between 8.00 p.m. to 10.00 p.m. on 29th July 2004. According to

Mr.Agrawal, this reason is manifestly wrong and is not consistent with the materials which were produced before the lower Court. On the other hand, the record would clearly indicate that the said accused were in constant deliberation before the incident had occurred, which is supported by the fact of several telephone calls made by the respective accused or received on their mobile phones.

5. Mr.Agrawal submits that the next reason that has weighed with the lower Court for releasing those accused is that they are high officers of renowned company and two are businessmen and there is no likelihood of their fleeing from justice and apprehension of tampering with evidence can be taken care of by imposing suitable conditions. Even this reason contends Mr.Agrawal, cannot be sustained, having regard to the seriousness of the offence. Reliance is placed on the decision reported in **(2001) 6SCC 338 in Puran vs. Rambilas & Anr.** to contend that such reason cannot be the basis for grant of bail, overlooking the seriousness of the offence and that is a good

ground for this Court to interfere in exercise of powers under Section 439 of the Code of Criminal Procedure.

6. Mr.Agrawal then contends that the third reason that has weighed with the Court below is that there are allegations and counter allegations and in such a situation exercising discretion in favour of the accused was warranted. Mr.Agrawal contends that even this reason cannot be sustained both, on facts and in law.

7. On the other hand, Counsel appearing for the accused contend that no fault can be found with the view taken by the lower Court and they have supported the conclusion reached by the lower Court for releasing the concerned accused on bail. In addition, it is contended that insofar as the allegation of conspiracy is concerned, that is obviously an afterthought, inasmuch as, no such allegation is made in the FIR which was originally filed against the present accused. It is contended that the allegation of conspiracy is essentially founded on the telephone calls received and made by

the concerned accused from their mobile phones. On the other hand, according to the Counsel for the accused, on considering the events that preceded the incident in its proper perspective, it would appear that each of the accused was in the process of sorting out the crisis which had occurred due to unforeseen situation on account of heavy rains. If the accused were interacting amongst themselves in that behalf, that cannot be the basis to infer that they had engaged themselves in criminal conspiracy as a result of which, the present incident had occurred. On the other hand, according to them, it was a mob fury and to pacify the mob, which had approached the company precints, several attempts were made including lastly of lathi charge by the security men, but that did not pacify the situation, whereas, the position having aggravated, the security agency had no option but to open fire and one of the gunshot must have hit the deceased. According to the learned Counsel, in such a situation, it is not possible to take the view that it was a case of premeditation or criminal conspiracy, but at best, events unfolded on the spur of the moment, resulting in Hiren Gajanan

Bhandari receiving a shot, fired from the gun of the security men. The case of the accused is that they made sincere efforts to resolve the crisis but the incident happened on account of the reasons beyond the control of the concerned persons on the scene of offence. Besides, the Officers of the Company have suffered injuries and in fact, their case is that the mob was the aggressor and they had to defend themselves, which resulted in the untoward situation.

8. Upon considering the rival submissions and perusing the records produced before me, I have no hesitation in taking the view that no fault can be found with the order passed by the lower Court releasing the concerned accused on bail by imposing strict conditions. I am in agreement with the submissions canvassed on behalf of the concerned accused that there is no tangible material with regard to the allegation of criminal conspiracy which has been introduced subsequently by the prosecution, except the record regarding telephone calls exchanged between the Accused, which are pressed into service on behalf of the prosecution.

That by itself, cannot be the basis to infer that the accused had entered into criminal conspiracy to commit the alleged offence. If it is so, no fault can be found with the reason recorded by the lower Court that there was no material to indicate how conspiracy was hatched against the accused persons between 8.00 p.m. to 10.00 p.m. As the argument of criminal conspiracy cannot be accepted at this stage, there is hardly any basis to interfere with the order of the lower Court. Although the lower Court has not recorded the reason as is canvassed on behalf of the Accused that the events which preceded the incident, it is possible that an unsuccessful attempt was made by the officers on the scene to pacify the situation but that attempt failed because of the aggravated situation which necessitated the opening fire causing injury to the members of the mob. Much stress was placed by Mr.Agrawal on the fact that the medical certificate discloses 67 injuries on the person and several pellets were also recovered. It was argued that firing was resorted to in reckless manner. However, this submission overlooks that only eight rounds were fired from the Double Barrel Gun.

Besides, one shot would discharge several pellets from the cartridge and in all probability, only one shot caused as many as 67 injuries to the person in the mob. There is some substance in the argument canvassed on behalf of the accused that the alleged incident occurred on the spur of the moment and not premeditated. Besides, two different versions are forthcoming from the rival groups. Moreover, it is seen that the cartridges and the guns have since been recovered by the Police. It is also seen from the record that the concerned accused were initially for four days in police custody and later on, remanded to judicial custody for six days and have been interrogated.

9. Taking overall view of the matter, it will not be appropriate to cancel the bail granted by the lower Court. Indeed, Mr.Agrawal placed heavy reliance on the decision of the Apex Court in the case of **Puran vs. Rambilas (Supra)**, however, for the reasons already recorded earlier, I find no basis to disturb the opinion reached by the lower Court on analysis of the materials placed before it. I am in agreement with the said view reached

by the lower Court for which reason no interference with the order granting bail to the concerned accused, that too, when strict conditions have been imposed including not to enter village Kharadpada till further orders has been passed.

10. That takes me to the challenge regarding the correctness of the order passed by the lower Court in the case of Ram Ashish Rai and three others. The lower Court has considered the relevant aspects and in Para 18 of the decision has noted the plea taken on behalf of the concerned accused, who had opened fire. According to them, they had no option but to open fire because of the aggravated situation as the mob was turning violent. The lower Court has observed that there was no evidence that they had intention or knowledge to cause injury to any person. Besides, it is rightly argued on behalf of the said accused that at this stage, it is too early to point out that particular gunman was responsible for the injury caused to the deceased Hiren Bhandari. In all, four gunmen had opened fire. Besides, 20 security guards initially tried to disburse the mob

by making lathi charge. So far as the present accused are concerned, there is no evidence that the injury caused to the deceased Hiren Bhandari was on account of firing by particular gunman. As mentioned earlier, the guns as well as cartridges have been recovered by the Police. The necessary evidence in that behalf is already collected. Even these accused were in police custody initially for four days and later on, in judicial custody for six days. Their statements have also been recorded. In that view of the matter, the basis on which the bail has been granted to these accused also cannot be taken exception to. The lower Court has considered the relevant aspects while passing that order. Accordingly, the challenge to the order granting bail even to these accused cannot be sustained.

11. That takes me to the application for anticipatory bail preferred by Panjikar. Before I proceed to examine this application, it would be appropriate to advert to the prosecution case in the complaint as registered. It appears that Applicant-Accused Panjikar, at the relevant time,

was at his residence but on receiving telephone call, he arrived on the scene. According to the complaint lodged by Panjikar on arriving at the scene of offence, he was assaulted by the mob who had gathered at the gate of the factory. On enquiry, he was not disclosed the reason. He was then taken in ambulance to medical centre, where he was treated for the several injuries received during the assault by the mob. However, in the complaint as registered against the accused persons, there is no mention about the assault on Panjikar. Whereas, it only indicates that when the mob had gathered at gate No.2 suddenly at 10 O'clock the watchman of gate and other watchman along with other security personnel both in uniform as well as in mufti came and started lathi charge on the village people assembled outside gate No.2 in order to disperse them. It is then stated that a few security personnel fired from within the gate, in which, Hiren, the son of the brother of the complainant fell down. In other words, as has been observed by the lower Trial Court while granting the bail to the other accused, there are cross cases filed and two different versions are

forthcoming. The fact remains that mob of more than 75 to 100 persons running high temper had gathered at the factory gate. What is relevant to note is that the F.I.R. makes no mention about the role of the applicant Panjikar, whereas, the complaint is registered only against Kartik Mehta and 20 security guards and gunmen of Reliance Company. There is no reference to the involvement of the applicant Panjikar and no role has been attributed to him. On the other hand, from the complaint filed by Panjikar at Vapi Police Station, where he got himself admitted in Hospital for treatment, clearly mentions that he was assaulted by the mob without any reason.

12. Taking overall view of the matter, as already observed, the allegation of criminal conspiracy subsequently introduced seems only to implicate all the Officers of the Company. Accordingly, I am inclined to enlarge the applicant-Accused Hemchandra Yadunandan Panjikar on anticipatory bail on the following conditions:

(a) The Applicant is enlarged on anticipatory

bail in connection with C.R. No.I-157/04 registered at Silvassa Police Station, Dadra Nagar, Haveli on executing personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) and two sureties in the like amount.

(b) The Applicant shall abide by all the conditions provided in Section 438(2) of the Code of Criminal Procedure, as applicable to the State of Maharashtra.

(c) The Applicant shall make himself available for interrogation by Police Officer as and when required and shall attend the concerned Police Station between 11.00 a.m. to 5.00 p.m. on every Monday or on such other date and time as may be directed by the Investigating Officer.

(d) The Applicant shall not himself or cause to influence the prosecution witnesses or tamper with the prosecution evidence in any manner whatsoever.

(e) The Applicant shall deposit his passport

with the Investigating Officer. If Applicant does not possess any passport, he shall file affidavit to that effect in this Court within one week from today.

(f) The Applicant shall not remove himself from the jurisdiction of Vapi Police Station without giving prior intimation to the Investigating Officer.

. All Applications disposed of accordingly.

A.M.KHANWILKAR, J.